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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 19, 2000

APPLICATION OF

BEACON CAPITAL MANAGEMENT, INC.

CASE NO. SEC000013

For an official interpretation  
pursuant to the Virginia Securities  
Act § 13.1-525

OFFICIAL INTERPRETATION

THIS MATTER came before the Commission for consideration upon the letter-application of Beacon Capital Management, Inc. ("Applicant") dated September 9, 1999, as supplemented on November 30, 1999, filed under § 13.1-525 of the Virginia Securities Act, § 13.1-501 et seq. of the Code of Virginia ("Act"), by its counsel and upon payment of the requisite fee. Applicant has requested a determination as to whether or not certain persons participating in a referral-fee arrangement involving investment advisory services must register pursuant to § 13.1-504 A(ii) of the Act, as investment advisors or investment advisor representatives. The pertinent information contained in the application is summarized as follows:

Applicant, a registered investment advisor, provides fee-only investment management and advisory services to its clients in Virginia. Applicant plans to enter into a referral-fee

arrangement with Bank of McKenney, located in Dinwiddie County, Virginia ("Bank") in hopes of expanding its client base while enabling the Bank to provide its customers with additional financial services.

The Bank will refer customers to Applicant, and in return Applicant will compensate the Bank by paying to the Bank a portion of the investment management services fees received from those customers.

The Bank will advertise Applicant's services to its customers, and the Bank's employees will refer customers expressing interest in investment management services and financial planning to Applicant. The Bank will offer Applicant's brochures and other information to its customers summarizing the Applicant's services. The Bank's employees will only provide interested customers information sufficient to enable them to contact Applicant. The Bank's employees will not have the authority to advise customers on investments or express any opinions on the Applicant's services.

Section 13.1-504 A(ii) of the Act provides, in part:

A. It shall be unlawful for any person to transact business in this Commonwealth as . . . (ii) an investment advisor or investment advisor representative unless he is so registered under this chapter. . . .

However, § 13.1-504.1 allows certain financial institutions to avoid registration if their employees perform only clerical

and ministerial duties incident to the offer and sale of securities. Securities Rule 21 VAC 5-20-320 further explains and limits the exemption. While banks are not enumerated in the statute, they provide essentially the same services as those enumerated institutions. It appears that the language of § 13.1-504 A(ii) of the Act demonstrates legislative intent that employees of financial institutions providing only clerical and ministerial services to certain securities related businesses are not within the intent of the definition of investment advisor representative under § 13.1-501 of the Act.

THE COMMISSION, based upon the information supplied by Applicant, is of the opinion and finds that the foregoing proposed activities and services as limited by Securities Rule 21 VAC 5-20-320 will not require registration pursuant to § 13.1-504 A(ii) of the Act. It is, therefore,

ORDERED that the Bank's employees, whose activities are performed as described above, are not required to register as investment advisor representatives pursuant to § 13.1-504 A(ii) of the Act, provided they comply with the above-cited rule.